SINGLE BENCH (5)

-1-

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. NO. 1017 /2006 S.B.

(Petition U/A 226/227 Constitution of India)

PETITIONER : 1- Tikaram Yadav
S/O Shri Nathuram Yadav
Aged about 44 years.,Occupation- Service
Asstt.Grade–III, Collectorate R/o H/5,
Collector Colony,Kabirdham (C.G.)

2.- Shirish Pandit,S/O Shri M.A. Pandit
Aged about 42 years, Occupation Servic
Asstt. Grade-III, Collectorate, Kabirdham
R/O H/2, Collector Colony, Kabirdham(C.G.

C.R. No. 9/06/06
Presented by Shri [illegible]
dated 12/12/06

VERSUS

RESPONDENTS: 1- State of Chhattisgarh Through
Collector,and Chairman,D.P.C..
District Kabirdham (C.G.)

2. Shri Navneet Dubey,Asstt Grade-III,
Collectorate, Kabirdham R/O H/7
Collector Colony , Kabirdham (C.G.)

3. Shri Mohan Lal Nishad, Asstt Grade-III,
Collectorate Kabirdham R/O H/8,
Collector Colony , Kabirdham (C.G.)

4. Shri Ram Narayan Soni, Asstt Grade-II
Collectorate Kabirdham .R/O H/10,
Collector Colony ,Kabirdham (C.G.)

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PETITION UNDER ARTICLE 226/227 CONSTITUTION OF INDIA

1 RYadav

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1017 of 2006

Petitioner: Tikaram Yadav & another

Versus

Respondents: State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Yashwant Tiwari, Advocate for the petitioners.

Shri V. V. S. Murty, Deputy Advocate General for the Respondent No.1.

None for the respondents No. 2 to 4, though served.

ORDER

(Passed on this 17th day of January, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The petitioners have filed this petition impugning the order dated 7.12.2005 (Annexure P/1) passed by the respondent No.1, whereby the respondents No. 2, 3 and 4 have been promoted on the post of Assistant Grade-II.

2. The indisputable facts, in nutshell, are that the petitioners were appointed on the post of Assistant Grade-III vide order dated 15.2.1999 (Annexure P/3). According to the petitioners the respondents No. 2 and 3 were appointed on 22.6.1999 and the respondent No.4 was appointed on 15.11.1999, on the post of Assistant Grade-III. According to the gradation list (Annexure P/2) the seniority of the petitioners and the respondents No. 2 to 4 are as under :-

Shri Tikaram Yadav	- Petitioner No.1	- Srl. No. 26
Shri Shirish Pandit	- Petitioner No.2	- Srl. No. 27
Shri Navneet Dubey	- Respondent No.2	- Srl. No. 28
Shri Mohan Lal Nishad	- Respondent No.3	- Srl. No. 29
Shri Ram Narayan Soni	- Respondent No.4	- Srl. No. 32

3. I have heard Shri Yashwant Tiwari, learned counsel appearing for the petitioners and Shri V. V. S. Murty, learned Deputy Advocate General, appearing for the respondent No.1/State and perused the record.

4. Learned counsel for the petitioners submits that the promotion from the post of Assistant Grade-III to the post of Assistant Grade-II should have been based on the criteria of seniority-cum-merit, as provided in the Chhattisgarh Public Service (Promotion) Rules, 2003 (for short 'the Rules, 2003'). He further submits that there is no stigma in the service career of the petitioners, even then juniors to them have been promoted, ignoring the claim of the petitioners. In support of his contention learned counsel for the petitioner relied on a decision of this Court passed in the case of **K. P. Patel Vs. State of Chhattisgarh & another** {2006 (1) C.G.L.J. 264}. He submits that the case of the petitioners is squarely covered by the above decision of this Court.

5. Rule 6 of the Rules, 2003 provides for assessment of the employee for promotion on the basis of merit-cum-suitability. Sub-rule (7) of the Rule 6 clearly mandates that the departmental promotion committee would assess the candidate for promotion separately by classifying them as 'fit' or 'unfit'. Sub-rule (2) and (7) of the Rule 6 are relevant, which are quoted herein below :-

> " (2) पदोन्नति के लिये केवल ऐसे लोक सेवकों के नामों पर विचार किया जायेगा, जिन्होंने भरती नियमों के अनुसार फीडर संवर्ग/सेवा के भाग/पद के वेतनमान मे विहित अर्हकारी सेवा पूरी कर ली हो। तथापि उन समस्त लोक सेवकों के नामों पर विचार किया जाना आवश्यक नहीं होगा, जिन्होंने विहित न्यूनतम सेवा अवधि पूर्ण कर ली हो, परन्तु केवल उतनी ही संख्या में लोक सेवकों के मामलों पर वरिष्ठता के अनुसार विचार किया जायेगा, जो प्रत्येक प्रवर्ग के अधीन विद्यमान तथा एक वर्ष के दौरान सेवानिवृत्ति के कारण प्रत्याशित रिक्तियों की संख्या को भरने के लिये

(19)

पर्याप्त होगी। इसके अतिरिक्त, पूर्वोक्त अवधि के दौरान होने वाली अप्रत्याशित रिक्तियों को भरने के लिये, दो लोक सेवकों के या चयन सूची में सम्मिलित लोक सेवकों की संख्या के 25 प्रतिशत, जो भी अधिक हो, के नाम चयन सूची में सम्मिलित करने के उद्देश्य से प्रत्येक प्रवर्ग के लिये अपेक्षित संख्या में लोक सेवकों के नामों पर विचार किया जाएगा ।

(7) इस पद्धति से पदो के भरने के लिये, विभागीय पदोन्नति समिति, प्रत्येक लोक सेवक के मामले पर उसकी स्वंय की योग्यता के आधार पर पृथक्–पृथक् विचार करेगी, अर्थात लोक सेवकों की योग्यताओं का कोई तुलनात्मक निर्धारण करना आवश्यक नहीं होगा। विभागीय पदोन्नति समिति प्रत्येक लोक सेवक के अभिलेखों पर पृथक्–पृथक् विचार करेगी तथा उन्हें "उपयुक्त" अथवा "अनुपयुक्त" के रूप में वर्गीकृत करेगी । "

6. The identical issue came into consideration in the matter of **K. P. Patel** (supra). This Court after having examined various aspects of the case, held as under:-

> "17. It is therefore evident that the seniority subject to fitness does not contemplate assessment of comparative merit of the candidates as the fitness is the basis of selection of categorize 'fit' on the basis of individual merits, considered separately. The select list is prepared thereafter on the basis of seniority for promotion to the post of Executive Engineer. In the present case the respondents have clearly assessed the criteria on the basis of the comparative assessment by recording their performance as 'very good', 'good' and 'does not meet the criteria', not on their own merit separately."

7. The respondents have filed the proceedings of the departmental promotion committee dated 23.8.2005 as Annexure R/1 and R/2 which indicate that the candidates were not assessed as 'fit' or 'unfit'. There is a statutory provision for assessing the fitness of the candidates in accordance with Rule 6 (7) of the Rules, 2003. The departmental promotion committee has completely ignored the statutory provisions as enshrined in Rule 6 (7) of the Rules, 2003,

by assessing merits of the candidates on comparative assessment basis by awarding marks, not assessing separately on its own merit of a particular candidate for categorizing as 'fit' or 'not fit'.

8. In view of the above, the petition is allowed. The respondents are directed to consider the case of the petitioners along with other eligible candidates for promotion strictly in accordance with the provisions of the Rules, 2003. Consequently the impugned order dated 7.12.2005 (Annexure P/1) is quashed and set aside. No order as to costs.

Thakur

Sd/-
Satish K. Agnihotri
Judge